

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

International Union of Operating Engineers, Local 150, AFL-CIO; Midwest Operating Engineers Pension Trust Fund; Local 150 IUOE Vacation Savings Plan; and Construction Industry Research and Service Trust Fund;)	
)	
)	Case No.: 18-CV-2404
)	
Plaintiffs,)	Judge John J. Tharp
)	
v.)	Magistrate Young B. Kim
)	
Landscape Consultants, Inc. d/b/a Phil Robin Landscapes, an Illinois corporation;)	
)	
Defendant.)	

MOTION FOR ENTRY OF FINAL JUDGMENT

Plaintiffs International Union of Operating Engineers, Local 150, AFL-CIO (“the Union”); Midwest Operating Engineers Pension Trust Fund; Local 150 IUOE Vacation Savings Plan (collectively, “the Funds”); and the Construction Industry Research and Service Trust Fund (“CRF”) move to enter final judgment against Defendant Landscape Consultants, Inc., d/b/a Phil Robin Landscapes, an Illinois corporation (“Phil Robin”), for unpaid contributions owed, interest, liquidated damages, costs, and attorneys’ fees under Section 515 of the Employee Retirement Income Security Act (ERISA) of 1974, 29 U.S.C. § 1145. In support of this Motion, Plaintiffs state as follows:

1. On April 4, 2018, Plaintiffs filed suit against Phil Robin for unpaid contributions, interest, liquidated damages, and attorneys’ fees and costs owed under a collective bargaining agreement with Local 150, which was effective January 1, 2013, through December 31, 2018

(Complaint ¶ 5, Ex. A, Doc. #1-1, filed 04/04/18). On July 17, 2018, Plaintiffs filed their First Amended Complaint (Doc. #36 at PageID #116; Doc. #36-4 at PageID #160).

2. On August 30, 2019, this Court entered its “Memorandum Opinion and Order” denying Phil Robin’s Motion for Judgment on the Pleadings and granting Plaintiffs’ Motion for Partial Summary Judgment (Doc. #72, filed 08/30/19, at Page 9 of 9, PageID #1253). In its Opinion, the Court found “Phil Robin is required to comply with its obligations under the most current version of the collective bargaining agreement from 1993 to at least July 2018 (*id.*).

3. On October 26, 2020, the Funds received the results of an audit conducted over the period of January 1, 2012, to December 31, 2019. Upon careful review of that audit, the Funds have decided not to pursue those amounts.

4. Employers such as Phil Robin are required to report to the Funds the hours worked by its bargaining unit employees on a monthly basis. Based upon the hours worked as reported by Phil Robin from May 2012 through June 2018, the Funds have calculated unpaid contributions owed for the entire timeframe to be \$41,440.00 (Exhibit A, Certification of Thomas M. Bernstein dated February 17, 2021 (“Bernstein Cert.”) ¶ 4).

5. Pursuant to Section 502(g) of ERISA, the Funds are entitled to recover interest on those unpaid contributions. 29 U.S.C. § 1132(g)(2)(B). The Funds have calculated interest based upon an annual rate of 12 percent to be \$32,235.46 (Ex. A, Bernstein Cert. ¶ 4).

6. Pursuant to Section 502(g) of ERISA, the Funds and CRF are entitled to liquidated damages not to exceed 20 percent. 29 U.S.C. § 1132(g)(1). The Funds and CRF have incurred liquidated damages in this action in the total amount of \$9,272.12 (Ex. A, Bernstein Cert. ¶ 4).

7. Pursuant to Section 502(g) of ERISA, Plaintiffs are entitled to an award of reasonable attorneys’ fees and costs. 29 U.S.C. § 1132(g)(1). Plaintiffs have incurred costs in this

action in the total amount of \$525.00 (Exhibit B, Certification of Dale D. Pierson (“Pierson Cert.”) ¶ 7).

8. Plaintiffs have incurred attorneys’ fees in this action in the total amount of \$89,333.75 (Ex. B, Pierson Cert. ¶ 10).

9. Pursuant to the CBA and 29 U.S.C. § 185, Local 150 is entitled to an award of amount of \$1,359.05 in unpaid dues (Ex. B, Pierson Cert. ¶ 12).

10. Pursuant to the CBA and 29 U.S.C. § 185, the CRF is entitled to an award of unpaid contributions in the amount of \$800.00.

WHEREFORE, Plaintiffs respectfully request that the Court enter judgment for unpaid contributions, interest, liquidated damages, and attorneys’ fees and costs in the amounts set forth below (a Proposed Order to this effect is attached hereto as Exhibit C):

Unpaid contributions for hours worked April 2012 through June 2018:	\$41,440.00
Unpaid CRF contributions for hours worked April 2012 through June 2018:	\$800.00
Interest on unpaid contributions based upon annual interest rate of 12 percent:	\$32,235.46
Liquidated damages for unpaid contributions:	\$9,272.12
Unpaid administrative dues for hours worked April 2012 through June 2018	\$1,359.05
Costs:	\$525.00
Attorneys’ fees:	\$89,333.75
Total:	<u>\$174,965.38</u>

Dated: February 19, 2021

By: /s/ Dale D. Pierson

One of the Attorneys for Plaintiffs

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CERTIFICATE OF SERVICE

The undersigned, an attorney of record, hereby certifies that on February 19, 2021, he electronically filed the foregoing *Motion for Entry of Final Judgment*, which sent notice to the following:

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